

AMENDED IN ASSEMBLY JUNE 29, 2017

AMENDED IN SENATE MAY 26, 2017

AMENDED IN SENATE MARCH 20, 2017

SENATE BILL

No. 384

**Introduced by Senators Wiener and Anderson
(Coauthor: Senator Allen)**

(Principal coauthors: Assembly Members Dababneh and Santiago)

(Coauthor: Assembly Member Obernolte)

February 14, 2017

An act to amend Section 25631 of, and to add Section 25634 to, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 384, as amended, Wiener. Alcoholic beverages: hours of sale.

The Alcoholic Beverage Control Act provides that any on- or off-sale licensee, or agent or employee of the licensee, who sells, gives, or delivers to any person any alcoholic beverage between the hours of 2 a.m. and 6 a.m. of the same day, and any person who knowingly purchases any alcoholic beverages between those hours, is guilty of a misdemeanor. Existing law provides for moneys collected as fees pursuant to the act to be deposited in the Alcohol Beverage Control Fund, with those moneys generally allocated to the Department of Alcoholic Beverage Control upon appropriation by the Legislature.

This bill would ~~allow an on-sale licensee to apply to authorize~~ the Department of Alcoholic Beverage Control to *issue an additional hours permit to an on-sale licensee which would* authorize, with or without ~~conditions on the on-sale license~~, *conditions*, the selling, giving, or purchasing of alcoholic beverages at the licensed premises between the

hours of 2 a.m. and 4 a.m., upon completion of specified requirements by the local jurisdiction in which the licensee is located and upon payment of a fee to be deposited in the Alcohol Beverage Control Fund, as provided. The bill would require the applicant to notify specified persons of the application for *an* additional hours *permit* and would provide a procedure for protest and hearing regarding the application. ~~The bill would prohibit a new license to operate during extended hours under these provisions from being issued until any existing license issued by the department at the premises has been canceled.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) It is the policy of the state to promote the responsible
- 4 consumption of alcoholic beverages through making multiple
- 5 planning options available to local communities and entertainment
- 6 areas of the state, including the option of extended services hours
- 7 up to a limit of 4 a.m. in communities and areas of the state where
- 8 those extended hours are found by the governing body of the
- 9 responsible community to be proper and appropriate.
- 10 (b) At least 15 states across the country delegate complete or
- 11 partial authority for setting service hours to local jurisdictions or
- 12 allow local jurisdictions to extend the hours of service, subject to
- 13 state approval.
- 14 (c) The Legislature supports a well-planned and managed
- 15 nightlife that can have a profound positive impact on a local
- 16 economy, generating direct tax revenues, and growing public funds
- 17 through revitalized business districts, and increased tourism.
- 18 (d) The Legislature supports the world-renowned California
- 19 licensed restaurant, venue, and entertainment industry, which
- 20 generates more than \$50 billion every year in consumer spending
- 21 in California communities on jobs, goods and services, and related

1 industries, and that attracts world-class acts as well as tourists to
2 visit and enjoy California.

3 (e) The Legislature has determined that it is in the best interest
4 of the State of California for extended hours of operation policies
5 to be administered by the Department of Alcoholic Beverage
6 Control in connection with applications for additional hour
7 privileges, with the fees for those applications to be determined
8 and assessed by the department at a rate that will fully reimburse
9 the department for administrative expenses.

10 SEC. 2. Section 25631 of the Business and Professions Code
11 is amended to read:

12 25631. (a) (1) Except as provided in subdivision (b), any on-
13 or off-sale licensee, or agent or employee of that licensee, who
14 sells, gives, or delivers to any persons any alcoholic beverage or
15 any person who knowingly purchases any alcoholic beverage
16 between the hours of 2 a.m. and 6 a.m. of the same day, is guilty
17 of a misdemeanor.

18 (2) For the purposes of this subdivision, on the day that a time
19 change occurs from Pacific standard time to Pacific daylight saving
20 time, or back again to Pacific standard time, “2 a.m.” means two
21 hours after midnight of the day preceding the day such change
22 occurs.

23 (b) (1) In a city, county, or city and county that has additional
24 serving hours pursuant to Section 25634, any on-sale licensee, or
25 agent or employee of the licensee, who sells or gives to any person
26 any alcoholic beverage or any person who knowingly purchases
27 any alcoholic beverage between the hours of 4 a.m. and 6 a.m. of
28 the same day, is guilty of a misdemeanor.

29 (2) For the purposes of this subdivision, on the day that a time
30 change occurs from Pacific standard time to Pacific daylight
31 savings time, or back again to Pacific standard time, “4 a.m.”
32 means four hours after 12 midnight of the day preceding the day
33 the change occurs.

34 SEC. 3. Section 25634 is added to the Business and Professions
35 Code, to read:

36 25634. (a) Notwithstanding Section 25631, the department
37 may *issue an additional hours permit which would* authorize, with
38 or without conditions, the selling, giving, or purchasing of alcoholic
39 beverages at an individual on-sale licensed premises between the
40 hours of 2 a.m. and 4 a.m. within a city, county, or a city and

1 county if the local governing body of that city, county, or city and
2 county, or its designated subordinate officer or body does the
3 following:

4 (1) Develops and approves a local plan that meets the following
5 requirements:

6 (A) Shows that the public convenience or necessity will be
7 served by the additional hours.

8 (B) Identifies the area that will be affected by the additional
9 hours and demonstrates how that area will benefit from the
10 additional hours.

11 (C) Shows that residents and businesses within the additional
12 hours service area support the additional hours.

13 (D) Includes an assessment by local law enforcement regarding
14 the potential impact of an additional hours service area and the
15 public safety plan, created by local law enforcement, for managing
16 those impacts that has been approved by the local governing body.

17 (E) Shows that transportation services are readily accessible in
18 the additional hours service area during the additional service
19 hours.

20 (F) Includes programs to increase public awareness of the
21 transportation services available in the additional hours service
22 area and the impacts of alcohol consumption.

23 (2) Resolves and certifies the local plan and submits the local
24 plan to the department.

25 (b) Upon receipt of a local plan developed pursuant to paragraph
26 (1) of subdivision (a), the department may review the local plan
27 to ensure compliance with existing law.

28 (c) An on-sale licensee shall not apply for *an* additional hours
29 *permit* pursuant to this section until the department has received
30 the local plan of the city, county, or city and county in which the
31 licensed premises is located.

32 (d) (1) Upon receipt of an application by an on-sale licensee
33 for *an* additional hours *permit* pursuant to this section, the
34 department shall make a thorough investigation to determine
35 whether the additional hours *permit* sought by the applicant would
36 unreasonably interfere with the quiet enjoyment of their property
37 by the residents of the city, county, or city and county in which
38 the applicant's licensed premises are located.

39 (2) The applicant shall notify the law enforcement agencies of
40 the city, county, or city and county, the residents of the city, county,

1 or city and county located within 500 feet of the premises for which
2 ~~an additional hours~~ *are permit is sought*, and any other interested
3 parties, as determined by the local governing body, of the
4 application by an on-sale licensee for ~~an additional hours~~ *permit*
5 pursuant to this section within 30 consecutive days of the filing of
6 the application, in a manner determined by the local governing
7 body.

8 (3) Protests may be filed at any office of the department within
9 30 days from the first date of notice of the filing of an application
10 by an on-sale licensee for ~~an additional hours~~ *permit*. The time
11 within which a local law enforcement agency may file a protest
12 shall be extended by the period prescribed in Section 23987.

13 (4) The department may reject protests, except protests made
14 by a public agency or public official, if it determines the protests
15 are false, vexatious, frivolous, or without reasonable or probable
16 cause at any time before hearing thereon, notwithstanding Section
17 24300. If, after investigation, the department recommends that ~~an~~
18 ~~additional hours~~ *be authorized permit be issued* notwithstanding
19 a protest by a public agency or a public official, the department
20 shall notify the agency or official in writing of its determination
21 and the reasons therefor, in conjunction with the notice of hearing
22 provided to the protestant pursuant to Section 11509 of the
23 Government Code. If the department rejects a protest as provided
24 in this section, a protestant whose protest has been rejected may,
25 within 10 days, file an accusation with the department alleging the
26 grounds of protest as a cause for revocation of the additional hours
27 *permit* and the department shall hold a hearing as provided in
28 Chapter 5 (commencing with Section 11500) of Part 1 of Division
29 3 of Title 2 of the Government Code.

30 (5) This section shall not be construed as prohibiting or
31 restricting any right that the individual making the protest might
32 have to a judicial proceeding.

33 (e) (1) If, after investigation, the department recommends that
34 ~~an additional hours~~ *be authorized, with or without conditions on*
35 ~~the applicant's license, permit be issued, with or without conditions,~~
36 notwithstanding that one or more protests have been accepted by
37 the department, the department shall notify the local governing
38 body and all protesting parties whose protests have been accepted
39 in writing of its determination.

(2) Any person who has filed a verified protest in a timely fashion pursuant to subdivision (d) that has been accepted pursuant to this section may request that the department conduct a hearing on the issue or issues raised in the protest. The request shall be in writing and shall be filed with the department within 15 business days of the date the department notifies the protesting party of its determination as required under paragraph (1).

(3) At any time prior to the issuance of the ~~license~~, *permit*, the department may, in its discretion, accept a late request for a hearing upon a showing of good cause. Any determination of the department pursuant to this subdivision shall not be an issue at the hearing nor grounds for appeal or review.

(4) If a request for a hearing is filed with the department pursuant to paragraph (2), the department shall schedule a hearing on the protest. The issues to be determined at the hearing shall be limited to those issues raised in the protest or protests of the person or persons requesting the hearing.

(5) Notwithstanding that a hearing is held pursuant to paragraph (4), the protest or protests of any person or persons who did not request a hearing as authorized in this section shall be deemed withdrawn.

(6) If a request for a hearing is not filed with the department pursuant to this section, any protest or protests shall be deemed withdrawn and the department may approve the on-sale licensee's application for *an* additional hours *permit* without any further proceeding.

(7) If the person filing the request for a hearing fails to appear at the hearing, the protest shall be deemed withdrawn.

(f) The department shall notify the applicant of the outcome of the application for ~~additional hours~~; *an additional hours permit*. Any conditions placed upon the ~~license~~ *permit* pursuant to this section shall be subject to Article 1.5 (commencing with Section 23800).

(g) The applicant shall, at the time of application for *an* additional hours *permit* pursuant to this section, accompany the application with a fee of two thousand five hundred dollars (\$2,500). Fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund.

1 ~~(h) An extended license described by this section shall not be~~
2 ~~issued until any existing licenses issued at the premises by the~~
3 ~~department are canceled.~~

4 SEC. 4. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.